Indian Wells (760) 568-2611

Irvine (949) 263-2600 Los Angeles

(213) 617-8100 Manhattan Beach (310) 643-8448

Ontario (909) 989-8584

# BBK

### BEST BEST & KRIEGER 3

ATTORNEYS AT LAW

2855 E. Guasti Road, Suite 400, Ontario, CA 91761 Phone: (909) 989-8584 | Fax: (909) 944-1441 | www.bbklaw.com Riverside (951) 686-1450 Sacramento (916) 325-4000 San Diego (619) 525-1300 Walnut Creek (925) 977-3300 Washington, DC (202) 785-0600

Stephen P. Deitsch (909) 483-6642 stephen.deitsch@bbklaw.com

April 29, 2021

Mr. Stephen Parker Acting City Manager City of Upland 460 N. Euclid Ave. Upland, CA 91786

Re: Informed Consent - Joint Representation re Regional Sewer Contract

Dear Mr. Parker:

Best Best & Krieger LLP (the "Firm") has been representing the Cucamonga Valley Water District ("CVWD"), the City of Ontario ("Ontario") and the City of Fontana ("Fontana") (the "Co-Clients"), jointly regarding the Chino Basin Regional Sewage Service Contract dated as of October 19, 1994 (the "Regional Contract"). The other parties to the Regional Contract are the cities of Chino, Chino Hills, Upland and Montclair. The term of the Regional Contract is due to expire on January 2, 2023. As part of this joint representation, the Firm has been representing the Co-Clients to negotiate a revised, amended, and/or restated Regional Contract (the "New Regional Contract").

Recently, the City of Upland asked BBK to represent the City of Upland on the New Regional Contract along with the Co-Clients. Specifically, the Firm will be representing all four Co-Clients in the New Regional Contract. Further, it is our understanding that CVWD will receive and pay legal billings and then obtain reimbursement from the other Co-Clients. Accordingly, we must discuss with each co-client the potential impact of our joint representation and obtain each client's informed written consent to represent the Co-Clients in the New Regional Contract.

#### RULES OF PROFESSIONAL CONDUCT

Rule 1.7 of the California Rules of Professional Conduct provides in pertinent part:

(a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.



(b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.

(d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b)... and:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

#### SCOPE OF REPRESENTATION & DISCLOSURES

Our representation of the Co-Clients jointly concerns the above-described New Regional Contract. At the present time, and based upon what we have been advised by each Co-Client, we believe the Co-Clients' interests are aligned in the New Regional Contract. In accordance with the California Rules of Professional Conduct, we must provide you with written disclosure of the relevant circumstances of this joint representation, the reasonably foreseeable adverse consequences which might arise from the Firm's representation of the Co-Clients jointly, and obtain your consent thereto prior to proceeding with this joint representation. Although it is impossible to foretell all potential consequences which could arise from this type of representation, this letter addresses the reasonably foreseeable risks and conflicts that potentially may develop going forward, which we ask you to consider. Pursuant to the provisions of Rule 1.7, we inform you as follows:

1. Potential Conflicts - For each of the Co-Clients, you may differ on strategy, costs or on the issue of whether to settle on certain terms; you may instruct the Firm in a manner for one client that is contrary to another client. It may be argued that there is an appearance of impropriety in our representation of joint clients simultaneously; and/or, you may take a position or act in a manner for one client that could be prejudicial to the interests of another client.



> Our joint representation of the Co-Clients on the New Regional Contract is solely to negotiate and document the new contract. Each Co-Client agrees that they will not use the Firm's work on the New Regional Contract as the basis for conflicting us in any matter in which the Firm might represent one or more of the Co-Clients against the other on a separate matter(s) unrelated to the New Regional Contract. For example, the Co-Clients agree that they will not use the Firm's representation of CVWD on the Chino Basin matters, where another law firm represents Ontario in the same basin matters, as a basis to conflict the Firm out of its Chino Basin work for CVWD. Additionally, the Firm represents the City of Montclair as special counsel on various land use and CEQA matters that one or more of the Co-Clients may have an interest in. Furthermore, it is possible that the Firm may represent future clients in the surrounding areas of the Co-Clients on matters in which the Co-Clients may have an interest. By signing this conflict waiver, each of the Co-Clients agree that they will not use the Firm's work on the New Regional Contract matter to conflict the Firm from representing the other described Firm clients on various matters unrelated to the New Regional Contract matter.

- 2. <u>Disputes Between Clients</u> Should you feel that there is a potential dispute, actual dispute or claim between the Co-Clients in the New Regional Contract, it should be brought to our attention immediately as we may not be able to counsel you regarding rights or obligations as between the Co-Clients, whether or not such rights or obligations relate to the subject matter of the representation. In the event such a disagreement cannot be worked out between the Co-Clients, there is a possibility that such a disagreement would develop into an actual conflict of interest between the Co-Clients that would require the Firm to withdraw from further representing the Co-Clients in this matter. Such a situation could require increased expense, time and effort on your part if new counsel is needed. Again, any such changes or new information will be disclosed and discussed with you prior to any action being taken that would significantly affect our attorney-client relationship.
- 3. No Confidentiality In cases of joint representation, although the Firm owes joint clients a duty of confidentiality as to third parties, there is generally no duty of confidentiality or attorney-client privilege between or among the joint clients. Firm has a duty to communicate and keep all clients reasonably informed about significant developments relating to the representation. Thus, communications made between one joint client and the Firm that are relevant to the joint representation are subject to disclosure to the other client, even in the absence of express consent to the disclosure. By consenting to this agreement, you



understand that there can be no confidentiality between Firm and the Co-Clients with respect to significant developments related to this representation.

In addition, you must maintain the confidentiality of all communications between you and us. If you fail to do so, it may jeopardize the attorney-client privilege between us. The result may be that other parties may be able to learn the content of confidential communications between us and/or, as a practical matter, could prejudice the non-disclosing person because otherwise confidential information may become known to third-parties. It is, therefore, critical that you understand the need for confidentiality concerning the communications between us and that you maintain that confidentiality. In other words, a joint representation does not change the privileged nature of such communications relative to outside third parties, but does change it as to the inside parties to the joint representation. By executing this letter, you expressly consent to the communication to the Co-Clients of any information received by the Firm from you during the Firm's joint representation of the Co-Clients in this matter.

- 4. No Attorney-Client Privilege Between Clients California Evidence Code § 962 provides that one joint client may not claim a privilege as to a communication made in the course of this attorney-client relationship when such a communication is offered in a legal proceeding between the joint clients. This also applies should a dispute arise between one client and the Firm in the future.
- 5. Balance of Interests In joint client representation, lawyers owe fiduciary obligations of loyalty to each of the jointly represented clients and cannot take sides or assert the interests of one client over the interests of the other. The Firm is required to balance the interest between the clients and may make decisions that will be in the best interests of the overall group and not necessarily in the best interests of an individual client. Thus, rather than the lawyers vigorously asserting a single interest of an individual client on an issue, there will be a balancing of interests among the joint clients.
- 6. Responsibility for Legal Fees and Costs CVWD shall be responsible for payment of all legal fees and costs associated with the Firm's representation of the Co-Clients in the New Regional Contract. In the event CVWD decides to terminate the Firm's representation of CVWD in the New Regional Contract, the remaining Co-Clients shall have the option to: (a) terminate the Firm's representation of them in the New Regional Contract; or (b) continue the Firm's representation of the remaining Co-Clients in the New Regional Contract, provided the Co-Clients agree to assume responsibility for payment of the Firm's legal fees and costs incurred after the date of termination by CVWD.



CRPC Rule 1.8.6 requires written consent when a lawyer is paid by another party to represent a client. We understand that CVWD will pay the Firm for its services related to the New Regional Contract. The Firm acknowledges, however, that all identified public agencies above are the Firm's co-clients in the New Regional Contract, and Firm shall not take instructions from CVWD, separately from the joint representation concerning the conduct of the New Regional Contract. The Firm does not perceive that this payment arrangement will interfere with Firm's independence or professional judgment or with the attorney-client relationship with each Co-Client in the New Regional Contract, and states that information relating to the joint representation of the Co-Clients will be protected as required by Business & Professions Code 6068(e).

- 7. Settlement CRPC, Rule 1.8.7 prohibits a lawyer who represents two or more clients from entering into an aggregate settlement of the claims of or against the clients, unless each client gives informed written consent. Please consider that differences in willingness to make or accept an offer of settlement are among the common risks of joint representation and could potentially result in a conflict of interest. Should a settlement be offered or otherwise considered in this matter, we will disclose the facts to you at that time and request your informed written consent to the settlement terms and conditions as necessary. In the event of a dispute, such as a disagreement concerning the settlement amount, its terms or if one client dissents from a proposed settlement, in which the Firm cannot continue to competently represent the divergent interests of all of the clients, the lawyers may need to withdraw from the representation of all or some of the clients.
- 8. Effect of Firm Withdrawing as Counsel If we are forced to withdraw from this representation because of a conflict, the expense of educating new counsel on events that may have transpired during the course of our representation might be significant. And, unless another conflict waiver is executed, it would require that you obtain separate counsel, thereby potentially adding to your expense. Such an event also might delay any needed response to parties in connection with the New Regional Contract, or in otherwise achieving the goals of the New Regional Contract.
- 9. <u>Termination</u> Each client has the absolute right to terminate the Firm regardless of what the other joint client(s) may decide. Should you wish to terminate the relationship, we will disclose the circumstances at that time and determine whether the Firm may continue representation or whether the representation must be terminated in its entirety, and consent will be obtained as necessary.



## BEST BEST & KRIEGERS

Mr. Stephen Parker April 29, 2021 Page 6

10. <u>Client File</u> - After the matter is concluded, each of you may make conflicting demands for the original client file, which you are entitled to receive. You each agree that we may release the original to the client who first provides a written request, as long as we release an exact copy to the other of you.

#### THE CITY'S CONSENT

If the City agrees to the above, we need the City to sign this consent letter. Should the City have any concerns that were not mentioned in this letter, please tell us immediately, so we can make sure to address them as necessary.

In the event that circumstances change or we become aware of new information that requires additional disclosures and/or a new consent, the City will be notified of that fact immediately, and continued representation will be subject to the informed written consent as necessary.

Please consider this matter carefully, and do not hesitate to contact us if the City has any questions or concerns. The City may wish to confer with its own independent legal counsel regarding this disclosure, and should feel free to do so.

The City's execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Rule 1.7 of the California Rules of Professional Conduct previously quoted in this letter.

We look forward to hearing from the City soon.

Sincerely,

Stephen P. Deitsch

of BEST BEST & KRIEGER LLP

Alex P. Dettrel

#### Consent

By this letter, Best Best & Krieger LLP has explained the joint representation, the existing and/or reasonably foreseeable potential risks and conflicts of interest in the New Regional Contract, and has informed the City of the possible consequences of this joint representation and those conflicts. The City understands that it has the right and has been



encouraged to consult with independent counsel before signing this consent, and the City acknowledges that it has been given sufficient time to do so.

Notwithstanding the foregoing, the City hereby consents and agrees to be represented by Best Best & Krieger LLP in the above-detailed joint representation.

By:for the	e City of Upland	
Dated:	5/10/21	